

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Sue Sang,

Complainant,

vs.

Southern California Edison Company (U338E),

Defendant.

(ECP)

Case 13-04-010

(Filed April 17, 2013)

DECISION DISMISSING COMPLAINT**1. Summary**

Today's decision resolves a complaint filed by Sue Sang (Complainant) against Southern California Edison Company (SCE) alleging that SCE repeatedly billed her for electricity usage that occurred after she closed her accounts. In addition to a refund of the erroneous charges, Complainant asks that SCE be penalized for failing to cooperate with discovery and that she be awarded \$600 for having to deal with SCE's alleged bad deeds. While we find that SCE erroneously billed Complainant for energy services in one instance, the record does not support a finding that SCE compromised Complainant's case by failing to cooperate with discovery or acted in a manner that warrants penalties. This decision directs SCE to refund (or credit) \$81.67 to Complainant and closes the proceeding.

2. Background

Sue Sang (Complainant) moved six or more times in 2011 and early 2013. With each relocation, Complainant asked that Southern California Edison Company (SCE) curtail her electric service. Toward the end of 2011, Complainant received a bill showing a past due amount for an account she had asked SCE to close. Subsequent bills showed additional past due charges and miscellaneous charges that Complainant believes reflect usage after she terminated service.

While the dates on which service curtailment was requested are central to the dispute at hand, neither party provides a particularly clear rendition of this sequence of events. As best that can be determined from the available evidence, the disputed curtailment dates for each property was as follows:

- Asterleaf Lane: Service was curtailed at this address between June 25, 2011 and February 25, 2012.
- Daybreak Drive: Service was curtailed at this address between February 11, 2012 and February 16, 2012.
- Homecoming Circle: Service was curtailed at this address between April 4, 2012 and April 20, 2012.
- Archibald Avenue: Service was curtailed at this address between September 1, 2012 and September 10, 2012.
- Palmetto Avenue: Service was curtailed at this address between June 1, 2012 and June 5, 2012.
- Belpine: Service was curtailed at this address between February 1, 2013 and February 26, 2013.

After attempts to resolve the matter informally failed, Complainant filed this action. Complainant asserts that SCE repeatedly billed her for electricity usage that occurred after she closed her accounts, that SCE has compromised her case by not cooperating with discovery, that she has incurred costs in the amount

of \$600 dealing with the improper account charges, and that SCE should be penalized for fraud, bad-faith, misrepresentation, and harassment.

3. Discussion

3.1. Did SCE Compromise Complainant's Case by not Cooperating with Discovery?

On or about May 28, 2013 Complainant served SCE with a Subpoena Duces Tecum.¹ By way of this subpoena, Complainant demanded SCE's "authentic computerized account history and statement of accounts" for several different accounts that have been held by her. In addition, Complainant sought information related to "... basic charges, kWh [kilowatt-hour] usage, address for the closing bill, number of days charged, state tax, California Alternate Rates for Energy (CARE), and discounts."

By way of reply, SCE first noted that in the absence of a pending civil court case, Complainant's subpoena was invalid.² SCE then opted to treat the subpoena as a data request and provided complainant documents it deemed responsive to the request. Rather than provide Complainant with copies of all bills related to the specified accounts, and/or documents showing the amount of energy used on a daily basis for each account, SCE only provided account summaries and copies of the last bill or two for the five accounts identified by Complainant. Though the documents SCE produced were true and correct copies of her bills, Complainant repeatedly asserted that the bills SCE produced

¹ Complainant also directed subpoenas to the California Public Utilities Commission and the assigned Commissioner in this proceeding.

² Among other things, Cal. Pub. Util. Code § 311(b) provides that the Administrative Law Judges (ALJs) may issue subpoenas in Commission proceedings, under rules that the Commission adopts.

were not the “authentic computerized account history and statement of accounts” requested and alleged that SCE’s providing summaries constituted fraud. This issue was taken up at length during the October 10, 2013 hearing.

During the hearing, after numerous questions by the ALJ, it became apparent that in demanding the “authentic computerized account history and statement of accounts” Complainant sought data showing the amount of energy used by the account holder on each day of the billing cycle. It appears SCE’s failure to produce documents showing the amount of energy used on a daily basis was the result of confusion about exactly what Complainant was seeking. This, along with the fact that the requested information was equally available to Complainant (via the internet), argue against a finding that SCE compromised Complainant’s ability to present her case.³

3.2. Was Complainant billed for service/usage that occurred after stated cut-off dates?

As a general matter, ascertaining the correct curtailment dates is more difficult because of SCE’s method of carrying balances forward from a closed account to a new account held by the same person(s). Rather than provide a bill that clearly identifies the account and dates for the usage fees being transferred, SCE merely includes a “Miscellaneous Charges” line item on the bill for the new account. Where a customer alleges that they are being charged for usage that occurred after the cut-off date, having the bill showing the transfer and the prior

³ This is especially true where we have available daily energy use averages but no clear evidence with which to determine the relevant service curtailment dates.

(closing) bill showing the dates for the charges would facilitate our resolution of this type of dispute.⁴

While both parties provide large numbers of documents, most of these documents were of limited evidentiary value (due to a lack of relevance and inconsistencies), and none of the documents were dispositive of this issue. For example, SCE initially stated that service was requested for 14351 Asterleaf Lane in Corona, California on October 5, 2011, and curtailed on February 24, 2012. However, in a letter to SCE Complainant clearly requests that service at this address be curtailed on June 25, 2011. Documents provided by SCE confirm that Complainant was receiving service at another address well before February 24, 2012, and at hearings SCE confirmed receipt of a letter dated June 25, 2011 requesting service be curtailed.

In addition to the erroneous cut-off date identified above for the Asterleaf Lane account, Complainant argues that several other curtailment dates identified by SCE are incorrect. Unfortunately, Complainant's testimony suffers its own flaws. As an initial matter, it appears that Complainant bears some responsibility for SCE's error about the Asterleaf Lane curtailment date. As shown in Complainant's Exhibit 1, Complainant asked SCE to close the Asterleaf Lane account on June 25, 2011. However, Complainant's Exhibits 2, 3, and 4 (dated July 13, 2011, July 23, 2011, and September 9, 2011, respectively) show that Complainant subsequently asked SCE employees to move her CARE account back to the Asterleaf Lane account which she had previously directed SCE to close.

⁴ While SCE prepared summaries of Complainant's account activity, these summaries cannot be given the same weight that the actual bills would receive.

More generally, Complainant's evidence shows unrealistic expectations and demands. Again, by way of example, in a letter dated Sunday, April 1, 2012, (identified by Complainant as Exhibit 14) Complainant insisted that termination be made that same day.⁵ Even if we ignore the fact that SCE does not generally perform such work on Sundays, because the letter demands service on the same day it was sent, SCE could not possibly perform as requested. Undaunted by the impossibility of her demand, Complainant goes on to insist that SCE not transfer any subsequent energy usage charges to her new account after her termination date. Complainant's failure to distinguish between what she requests and what SCE agrees to may be at the heart of this dispute.

Complainant's identification of the relevant addresses is also problematic. For example, Complainant refers to the Asterleaf Lane residence as being in Corona, California in one document and Chino Hills, California in another. Similarly, according to SCE, when service was requested at the Daybreak address, Complainant identified it as being in Eastville, California while SCE's records show the address as being in Mira Loma, California. According to SCE, when asked for clarification, Complainant refused to check or confirm the address.⁶

⁵ At hearings SCE testified that while the letter requesting curtailment was dated April 1, 2012, the postmark on the envelope shows that the letter was mailed some twenty days later.

⁶ Complainant's conduct over the course of this proceeding is consistent with SCE's allegations. Among other things, after Complainant missed the first day of hearings (because she provided an incorrect address on the Complaint), she claimed that she was not properly served and alleged judicial bias after the judge agreed to reschedule the hearing.

At hearings, Complainant was offered the opportunity to help clear things up by providing documents (such as rental agreements) showing the dates she occupied and vacated various residences.⁷ Complainant declined the ALJ's request and merely repeated her claim that several of SCE's dates are wrong and that SCE bears the burden of proof in this proceeding.⁸

Thus, while Complainant argues that SCE charged her for energy usage that occurred after she requested her accounts be closed, Complainant's own evidence and testimony show that Complainant: 1) Closed accounts and subsequently asked that they be used; 2) provided limited and conflicting information about the dates on which she moved and/or requested service be terminated; 3) made termination requests with which SCE could not reasonably be expected to comply; and 4) failed to distinguish between the date on which she requested service terminations and the date SCE agreed to terminate services. Both fairness and due process argue against requiring SCE to defend against claims based on the type of vague, erroneous, and/or shifting facts alleged here.

⁷ Complainant's Exhibit 8 suggests that she refused a similar request by SCE. Complainant subsequently argued that the ALJ's request for this information constituted an improper shift of the burden of proof and was indicative of bias.

⁸ On October 12, 2013, Complainant faxed an 11 page document to the ALJ. In addition to setting forth dates "of turning on and off electricity," listing the SCE customer service people she spoke to in order to obtain "confirmed" dates for closing the accounts, Complainant provided six pages of letters purportedly sent to SCE prior to the Complaint being filed, a four page criticism of the CPUC Complaint process, the claim that the ALJ asking for clarification about curtailment dates was an improper attempt to shift the burden of proof and evidence of bias, and an acknowledgment that the ALJ instructed her not to send him FAX communications. This document has not been included in the proceeding record as it was (improperly served and of little, if any, evidentiary value) procedurally and substantively flawed.

For its part, SCE exacerbates a difficult situation by identifying late fees, amounts owing, and other fees due on one account as a line item (Miscellaneous Fees) charge on the new account, and failing to produce all of Complainant's monthly billing statements and/or documents showing Complainant's actual daily energy usage. Of particular concern is SCE's inability to provide a clear or reasonable explanation of why Complainant was charged \$81.67 on the Asterleaf Lane account in February of 2012, when SCE was asked to close the account several months earlier. While SCE is not solely responsible for the confusion surrounding this account, it bears ultimate responsibility for maintaining accurate billings.⁹ Therefore, we will direct SCE to remove the \$81.67 charge from the Asterleaf Lane account from Complainant's bill. While there is ample evidence to support the claim that SCE wrongly charged Complainant for service at the Asterleaf Lane address, the record does not support the conclusion that SCE wrongly charged Complainant for service at any other addresses.

3.3. Reimbursement for Cost and the Request for Penalties.

Complainant requests penalties in an unspecified amount and asks to be reimbursed for \$600 for costs incurred dealing with SCE's "fraud, bad faith, and misrepresentations and harassment."¹⁰ This claim should be denied.

Complainant's allegations of fraud and bad faith lack evidentiary support.¹¹ In particular, Complainant failed to show that SCE acted improperly

⁹ While Complainant may have contributed to the confusion around this account, by asking SCE to keep her CARE rate active in the account, SCE should have identified and resolved this conflict when it occurred.

¹⁰ Complainant also requests that SCE be sanctioned for these acts.

in any instance other than with respect to the Asterleaf Lane account and, as noted above, SCE's mistake on the Asterleaf Lane account was consistent with Complainant's improper request. Neither law nor equity support a finding of fraud rooted in a mistake prompted by the complaining party: "No one can take advantage of his own wrong."¹²

Complainant's allegations of misrepresentation and harassment are even more problematic. Complainant's Exhibits consist primarily of letters forwarded to SCE by Complainant.¹³ Rather than identify misrepresentations or harassment by SCE, Complainant's letters show a propensity for hyperbole, misrepresentation, and argument, with little regard for cooperation or problem solving.¹⁴

Based on the proceeding record we find Complainant's allegations of fraud, bad faith, misrepresentation, and harassment lack factual support and are legally insufficient. Complainant's request for reimbursement in the amount of \$600 should therefore be denied.

¹¹ Among other things, "[a] complaint for fraud must allege the following elements: (1) a knowingly false representation by the defendant; (2) an intent to deceive or induce reliance; (3) justifiable reliance by the plaintiff; and (4) resulting damages. Every element must be specifically pleaded." (Service by *Medallion, Inc. v. Clorox Co.* (1996) 44 Cal.App.4th 1807, 1816.)

¹² See Civ. Code. § 3517.

¹³ Complainant submitted as Exhibits approximately 30 letters she wrote to SCE, several billing statements from SCE, and a few letters Complainant sent to the Commission.

¹⁴ SCE submitted records from numerous customer service representatives documenting that Complainant was rude, dismissive, and/or unwilling to work with them to identify and resolve her complaints.

4. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Darwin E. Farrar is the assigned Administrative Law Judge in this proceeding.

Finding of Facts

1. Complainant moved six or more times over the course of 14 months.
2. With each relocation, Complainant asked that SCE curtail her electric service.
3. A hearing was convened on October 10, 2013.
4. SCE transfers outstanding balances from closed accounts as a “Miscellaneous Charges” line item on the bill for the new account.
5. Complainant closed her Asterleaf Lane account on June 25, 2011.
6. Complaint closed the Asterleaf Lane account and subsequently directed SCE to use the account.
7. Complainant provided limited and conflicting information about the dates on which she moved and/or requested service be terminated.
8. Complainant made termination requests with which SCE could not reasonably be expected to comply.
9. Complainant failed to distinguish between the date on which she requested service terminations and the date SCE agreed to terminate services.
10. Complainant failed to provide any documentation of the costs incurred in bringing this action.
11. Complainant’s allegations of fraud, bad faith, misrepresentation, and harassment lack factual support. .

Conclusions of Law

1. Cal. Pub. Util. Code § 311(b) provides that the ALJs may issue subpoenas in Commission proceedings.

2. SCE did not compromise Complainant's ability to present her case.
3. Fairness and due process argue against requiring SCE to defend against claims based on vague, erroneous, and/or shifting facts.
4. There is ample evidence to support the claim that SCE wrongly charged Complainant for service at the Asterleaf Lane address.
5. The record does not support the conclusion that SCE wrongly charged Complainant for service at addresses other than Asterleaf Lane.
6. Complainant's allegations of fraud, bad faith, misrepresentation, and harassment are legally insufficient.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company shall deduct or credit (at its discretion) \$81.67 in charges from Sue Sang's bill.
2. Sue Sang's request for penalties and reimbursement in the amount of \$600 is denied.
3. Case 13-04-007 is dismissed.
4. Case 13-04-007 is closed.

This order is effective today.

Dated _____, at San Francisco, California.